

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
C.A. No. 3:17-cv-00470

CASCADE CAPITAL, LLC and)
CASCADE CAPITAL, LLC – SERIES A,)
)
Plaintiffs,)
)
vs.)
)
DRS PROCESSING LLC dba)
MILLER STARK KLEIN & ASSOCIATES,)
)
Defendant.)

ORDER

THIS MATTER came on for hearing before the Court on October 2, 2018 pursuant to the Court’s Order of October 1, 2018 (the “Contempt Order”), (Doc. No. 30), which found Defendant DRS Processing LLC dba Miller Stark Klein & Associates and its owner Darryl Miller in contempt of the Court’s Order of January 5, 2018 granting Plaintiff’s motion for a default judgment and injunctive relief (the “Judgment”), (Doc. No. 16). The Contempt Order imposed, but suspended, sanctions until after a hearing on October 2, 2018 at 10:00 am, the time of which was reset by docket entry to 11:00 am (the “Hearing”). Appearing at the Hearing for Plaintiffs was counsel of record, Caren D. Enloe. Appearing at the Hearing for Defendant and Darryl Miller was J. Alexander Heroy, who entered a Notice of Appearance on September 27, 2018, (Doc. No. 29).

In response to the Contempt Order, Defendant submitted the Affidavit of Darryl Tyrone Miller, (Doc. No. 31) (the “Miller Affidavit”). The Miller Affidavit set forth an itemization of the documents produced to Plaintiffs’ counsel and actions taken by him to uncover information about the Santander Accounts and Santander Portfolios (as defined in the Contempt Order, Doc. No. 30,

p. 3) from entry of the Contempt Order through the Hearing, and monies received from Defendant's collection of those accounts. Defendant has been ordered to produce certain documentation, specifically documentation concerning the Santander Accounts and Santander Portfolios which may have been deleted or otherwise removed from the ready-access of Defendant. In light of the Miller Affidavit and representation by the parties and counsel, it appears that Defendant stored its collection records regarding the Santander Accounts during the relevant time period (January 1, 2016 to the present) in its "Cloud based" program, "Simplicity Collection Software." It is expected that all data is believed to have been stored in the Cloud and should continue to be accessible by Simplicity Payment Solutions LLC trading as Simplicity Software ("Simplicity"), 1095 9th Street Idaho Falls, ID.

Because such information is relevant to determining Plaintiffs' damages, and because it appears possible to gain the information from Simplicity, the Court hereby enters this Order in aid of Plaintiffs' enforcement of the Judgment, in particular the injunctive relief granted therein.

It is furthermore noted that Defendant does not object to entry of this Order and joined Plaintiffs' verbal motion requesting the specific relief sought herein.

IT IS THEREFORE ORDERED:

1. Defendant will make available to Plaintiffs' counsel the contact information and all approvals necessary to enable Plaintiffs to search, access, and download the information regarding the Santander Accounts and the Santander Portfolios directly from Simplicity;

2. Upon entry of this Order, Simplicity shall be provided with a copy of this Order, the Judgment, and the Contempt Order and shall immediately assist Plaintiffs' counsel with the search, access, and download of Defendant's data with respect to the Santander Accounts and the Santander Portfolios, including any information deleted or otherwise removed from Defendant's

database but remaining available to Simplicity, regarding the Santander Accounts and the Santander Portfolios, In any event such production shall be completed within fourteen (14) days of Simplicity being provided with a copy of this Order;

3. Defendant shall be provided with equal and contemporaneous access to any and all records and documents made available by Simplicity to Plaintiffs or Plaintiffs' counsel.

4. Simplicity shall provide access logs and activity logs regarding Defendant's use of the Simplicity Collection Software during the relevant time period, including any deletions or modifications of the Santander Accounts or the Santander Portfolio within ten (10) days of being provided with copies of this Order, the Judgment, and the Contempt Order;

5. Within five (5) days, counsel shall select a mutually convenient date for the deposition of Darryl Miller and/or any other representative of Defendant with knowledge of the results of the Simplicity Cloud search to take place in Charlotte, North Carolina;

6. Defendant will continue to attempt to comply with the Contempt Order and the Default Judgment Order, and through counsel, will supplement the documents recently provided in a manner to insure full compliance with the Court's prior orders; and

7. The parties and Simplicity are further ordered to take all additional and further reasonable steps necessary to comply with the purpose and spirit of this Order;

Signed: October 5, 2018



Robert J. Conrad, Jr.
United States District Judge

